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THE RECOVERY OF NON-PECUNIARY LOSS IN EUROPEAN CONTRACT LAW, Ed by Vernon Valentine Palmer

Cambridge: Cambridge University Press (<http://www.cambridge.org>), 2015. lxxi + 459 pp. ISBN 9781107098626. £103.

In this, the fourteenth book published in the series The Common Core of European Private Law (published as part of the Cambridge Studies in International and Comparative Law), the focus of attention is the thorny issue of the recovery of non-pecuniary loss in the contract law regimes of 12 European jurisdictions, namely Austria, Bulgaria, England, France, Germany, Greece, Italy, the Netherlands, Poland, Portugal, Scotland, and Sweden. Previous contract law projects in the Common Core series have included ‘unexpected circumstances in European contract law’, ‘precontractual liability in European private law’, ‘mistake, fraud and duties to inform in European contract law’, ‘the enforceability of promises in European contract law’ and ‘good faith in European contract law’. This volume is a welcome and worthy addition to the series.

The initial chapters in Part 1 of the book are essentially introductory in nature, setting the scene for the hypothetical scenarios and country responses to come in Part 2. Part 1 of the book is composed of four chapters written by Nils Jansen and Vernon Palmer, which are largely taken up with a detailed examination of the various sources of the traditional hostility of contract law regimes to the recovery of this kind of loss. The preoccupation with the restriction of recovery to financial losses is particularly notable in the writings of both civilian and common law systems, with French, Belgian, and Romano-Dutch jurists as well as the English judiciary equally dismissive of the notion that liability should extend to non-financial or moral damage. In these chapters, Nils Jansen and Vernon Palmer move on to identify and discuss the areas of contract law where the vice-like grip on recovery for non-pecuniary losses was gradually loosened in European legal systems. For example, in contracts such as the contract for the promise of marriage, the psychological effect of a breach was deemed to be sufficiently egregious to warrant recovery. However, whether the loss recoverable was to be assessed as the spurned female’s patrimonial loss or reparation for the mental suffering sustained, varied across jurisdictions.

Part 2 of the book turns to consider the detail of the law governing the recovery of damages for non-patrimonial loss in the twelve selected European legal systems. This is undertaken in the time-honoured fashion of the Common Core of European Private law methodology, i.e. a number of hypothetical scenarios are put forward for consideration. The country reporters are asked to deliberate on the ‘operative rules’ (i.e. the legal source(s)), ‘descriptive formants’ (i.e. the factors that shape the law and legal changes, rather than the formal sources, such as legal scholarship) and ‘metalegal considerations’ (there would appear to be no formal definition of this expression in the book, but from the examples in the cases, it would appear to amount to scholarly and judicial criticism of the law) present in their own legal systems that are relevant to the case at hand. The comparative evidence is then assessed and a comparative conclusion is produced at the end of each case.

In essence, the hypothetical scenarios instantiate and chart the recent historical trend towards expansion in the permissibility of recovery of immaterial damage, such as damages for distress and inconvenience in contract law. The editor groups the twelve jurisdictions into three separate groups. The first group are termed the *liberal* regimes, where recoverability of non-financial and financial losses are treated equally in legal systems, such as those of France, Spain, Italy, Bulgaria, Greece and Portugal. Meanwhile, the second group is referred to as the *moderate* regimes, such as English, Scots and Dutch law. Here, the attitude is more restrictive than the first constituency, but in principle, recovery of non-patrimonial loss in contract is permitted, but subject to strict conditions, the doctrine of judicial precedent and various other particular norms. Finally, there is the third conservative group, where the tendency is towards the rejection of recovery, e.g. Germany, Poland, Sweden and Austria. Here, the tendency is for the courts to reject or exclude liability for non-financial losses.

In conclusion, this is a very useful collection of chapters containing a multitude of observations on the attitude of differing European legal systems on the recoverability of non-patrimonial losses. However,

it is the identification of the existence of a substantive 'common core' of law linking each of the jurisdictions together that is the book's greatest strength. In particular, the point is made that loss for pain and suffering is actionable and recoverable in contract in all of the European jurisdictions (even the conservative legal systems, where it is treated as an exception to the general rule) and that the intentional infliction of non-pecuniary harm is likewise recoverable. As with many other books in the Common Core series, these observations will be of great benefit, not only to legal academics, practitioners and judges, but also to law reformers and those interested in the codification of European contract law.

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